

No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

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ALLEN PEITHMAN, JR., AEP PROPERTIES, L.L.C., SHARON A. ELDER,  
*Petitioners,*

*v.*

UNITED STATES OF AMERICA,  
*Respondent.*

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**APPLICATION TO THE HON. NEIL M. GORSUCH  
FOR A 30-DAY EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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Pursuant to Rule 13(5) of the Rules of this Court, Applicants Allen Peithman, Jr., AEP Properties, L.L.C., and Sharon A. Elder move for an extension of time of 30 days, up to and including June 27, 2019, within which to file a petition for a writ of certiorari.

1. Applicants will seek review of the judgment in *United States v. Peithman*, 917 F.3d 635 (8th Cir. 2019). A copy of the decision, dated February 27, 2019, is attached as Exhibit 1. The current deadline for filing a petition for writ of certiorari is May 28, 2019. This application is filed more than 10 days before the date the petition is due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

2. Good cause exists for an extension. Applicants have recently retained Kelsi Brown Corkran and E. Joshua Rosenkranz of Orrick, Herrington & Sutcliffe LLP as new counsel, and therefore seek a 30-day extension to June 27, 2019, so that

new counsel can review the record, study the relevant case law, and prepare a petition. An extension is further justified by the press of business on numerous other matters. The undersigned is responsible for presenting oral argument on May 6 before the Central District of California in *Rhodeman v. Ocwen*, No. 5:18-CV-02363-JGB-KK. The undersigned is also responsible for assisting in preparation for oral argument before the Fifth Circuit in *Cain v. White*, No. 18-30955, on April 30, and before the Fourth Circuit in *Krakauer v. DISH Network, L.L.C.*, No. 18-1518, on May 9. Co-counsel E. Joshua Rosenkranz is responsible for oral argument on May 9 before the Fourth Circuit in *Krakauer v. DISH Network, L.L.C.*, No. 18-1518; a petition for certiorari due on May 14 to the U.S. Supreme Court in *Ramos v. Superior Court*, Cal. Ct. App. No. A153390; a reply brief due on May 23 to the Texas Supreme Court in *Credit Suisse AG v. Claymore Holdings, LLC*, No. 18-0403; a respondent's brief due on May 28 to the California Court of Appeal in *Gibbons v. AXIA Acquisition Corp.*, No. B288031; and an oral argument likely to be scheduled between July 8 and 12 before the Federal Circuit in *Idenix Pharmaceuticals LLC v. Gilead Sciences Inc.*, No. 18-1691. An extension of time will help to ensure that the petition clearly and thoroughly presents the vitally important and complicated issues raised by the Eighth Circuit's decision.

3. This case presents a substantial question of law on which the federal courts of appeals are divided. Several federal statutes authorize the government to seek forfeiture in connection with a criminal conviction. In *Honeycutt v. United States*, 137 S. Ct. 1626 (2017), this Court held that one of those statutes—21 U.S.C.

§ 853(a)(1), which applies to convictions for certain drug offenses—does not permit joint and several forfeiture orders against co-conspirators. The issue in this case is whether another forfeiture statute—18 U.S.C. § 981(a)(1)(C), which applies to convictions for a far broader range of offenses—likewise does not authorize joint and several orders.

The courts of appeals are sharply divided on that question, as the Eighth Circuit acknowledged in this case. *See* 917 F.3d at 652 (“not[ing] a circuit split ... on the question of whether *Honeycutt* applies to criminal forfeitures under § 981(a)(1)(C)”); *see also United States v. Reed*, 908 F.3d 102, 127 (5th Cir. 2018) (noting the “burgeoning circuit split” on the issue). The Third Circuit has held that joint and several forfeiture orders are impermissible under § 981(a)(1)(C), *United States v. Gjeli*, 867 F.3d 418 (3d Cir. 2017), and the Eleventh Circuit has strongly signaled its agreement, *United States v. Carlyle*, 712 F. App’x 862, 864-65 (11th Cir. 2017). Both courts emphasized the textual similarities between § 981(a)(1)(C) and § 853(a)(1) and relied heavily on *Honeycutt*’s reasoning. *See id.* In at least one other circuit, the government has conceded that § 981(a)(1)(C) does not permit joint and several orders. *See United States v. Gil-Guerrero*, No. 17-773-CR, 2018 WL 6720837, at \*4 (2d Cir. Dec. 21, 2018).

The Sixth and Eighth Circuits, in contrast, have held that § 981(a)(1)(C) permits joint and several forfeiture orders. *Peithman*, 917 F.3d at 650-52; *United States v. Sexton*, 894 F.3d 787, 799 (6th Cir. 2018). They distinguish *Honeycutt* by identifying certain textual differences between § 981(a)(1)(C) and § 853(a)(1). *See id.*

4. This Court's review is necessary to settle the conflict among the circuits and to ensure uniformity in the enforcement of federal statutes. *Honeycutt* read § 853(a)(1) to bar joint and several forfeiture orders in light of its plain text and bedrock principles of forfeiture liability. Section 981(a)(1)(C) bars joint and several orders for the same reasons, as the Third and Eleventh Circuits have explained—and as the government has conceded in at least one other court of appeals. The Eighth Circuit's contrary holding in this case misconstrues the plain language of § 981(a)(1)(C), ignores longstanding forfeiture principles, and contravenes *Honeycutt*.

5. For the foregoing reasons, Applicants hereby request that an extension of time be granted, up to and including June 27, 2019, within which to file a petition for a writ of certiorari.

Respectfully submitted,

*s/ Kelsi Brown Corkran*

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